Supreme Court, U.S.
FILED

(1)

98 236 MAY 7 1998

No. _____

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Paul W. Graber, et al.,

Petitioner,

v.

United States of America, Stephen Stalcup, Individually and Officially, et al.,

Respondents.

Writ of Certiorari

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Paul W. Graber, et al.,
c/o 205 Washington Ave.
Fairfield, Iowa 52556
515-469-6225

---

35 pp

QUESTION(S) PRESENTED

1. Whether 16th amendment removed requirement that Direct Tax be apportioned and that the apportionment be upon "among the several States?"

2. Whether 16th amendment allows United States to bypass several States authority and directly lay and collect taxes among the people of each Union State?

3. Whether phrase "among the several States" actually intends to include "among" the several People independent of each other?

4. Whether phrase "among the several States" provide jurisdiction limitation upon United States, regardless of where phrase appears in Constitution?

5. Whether FRAP Rule 47 and L. R. 47(A)(a) accomplish what 1st amendment was adopted to prevent?

6. Whether Fed. R. of Civ. Pr. and Fed. R. of Ap. Pr. accomplish what 1st amendment was adopted to prevent?

7. Whether a Judgement affirmation is considered a "Motion" by the 8th Circuit Court of Appeals while attempting to exercise Local Rule 47?

8. Whether phrase "summarily affirmed" has published judicial meaning?

9. Whether Administrative office of the United States Courts abridges separation of powers?

10. Whether Federal Reserve note has any secured substance as 12 U.S.C. § 411, as amended, provides?

11. Whether unredeemable Federal Reserve note should be classified as "worthless security" pursuant to Congressional Commerce Clause authority @ 26 USC § 165(g)?

12. Whether Fed. note meets substance test of a U.S. Dollar?

13. Whether U.S. Obligation is monies substance?

14. Whether United States has power to Tax U.S. obligations?

15. Whether 16th Amendment allows U.S. to act intrastate?

16. Whether Labor and Servitude performed involuntarily constitute violations of 13th Amendment?

17. Whether United States has intrastate power to impose its taxing will upon Union State Citizen directly without apportion..?

18. Whether United States is accomplishing with 16th amendment what involuntary servitude clause in 13th amendment was adopted to prevent?

19. Whether Income Tax Act, Federal Reserve Act, Emergency Farm Mort. Act, Security Act & Gold Removal Act are Constitutional?

20. Whether exercising redress has become impossible for non-attorneys to accomplish, rendering violations of 1st amendment?

21. Whether individual agents acting under color of authority can be named individually in 26 U.S.C. § 7433 damage action for recklessly and intentionally disregarding provisions of the law?

22. Whether Internal Revenue Service employees are classified as Agents of the United States Government?

23. Whether Citizens of a Union State and Residents of a Union State means the same by definition?

LIST OF PARTIES

[ ]All parties appear in the caption of the case on the cover page.

[x]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Plaintiffs:

Paul W. Graber,
William Miller,
Donna Miller,
William Stout,
Dorothy Stout,
John Hixon,
Enos C. Miller,
Samuel Z Strong, Jr.,
Roger W. Roth, NP,
Herman L. Ubben,
Wilda J. Ubben,
Marry V. Miller,
Albert C. Miller,
Denise Smith,
Johnny M. Smith,
Sally Lynn Webster,
Mary J. Burke,
Thomas Burke,
Norma K. Miller,
Ezra M. Miller,
Milton T. Leonard,
Mark C. Walker,
Kieth Wander,
Sandra Wander,
Gerald J. Wander,
Edward Jirak,
Jacob W. Schrock,
Chris Krise,
Renee Krise,
Donald D. Miller,

Joan L. Miller,
Thomas Joseph Stecklein,

and for the Defendants:

United States of America,
Stephen Stalcup, Individually and Officially,
Robert Brazzil,
Gary Perpich, Individually and Officially,
John Wiese, Individually and Officially,
Joe Aceto, Individually and Officially,
Timothy A. Truner, Individually and Officially,
Mary Jo Ratchford, Individually and Officially,
Lee Girad, Individually and Officially,
Dorothy O. Smith, Individually and Officially,
D.K. Marts, Individually and Officially,
Ladd Ellis, Individually and Officially,
J.W. Daniels, Jr., Individually and Officially,

TABLE OF CONTENTS

TABLE OF AUTHORITY.....-vi-

OPINIONS BELOW.....-viii-

JURISDICTION.....-ix-

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....-x-

STATEMENT OF THE CASE.....-1-

REASONS FOR GRANTING THE WRIT.....-2-

CONCLUSION.....-24-

INDEX TO APPENDICES

APPENDIX A
COMPLAINT.....

ORDER OF DISTRICT COURT, AUGUST 15-1997

NOTICE OF APPEAL.....

ORDER DISMISSING APPEAL FEBRUARY 6-1998

TABLE OF AUTHORITIES

CASES PAGE NUMBER

Bowers v. Kerbaugh-Empire Co.
271 U.S. 170.....23
Brushaber v. Union Pacific R.R. 240
U.S. 1.....23
Craig v. Missouri, 4 Pet. 410.....10
Chisolm v. Georgia, 2 Dall, 419.....21
Dillon v. Barnard, 21 wall, 430.....11
5 Elliot, Deb. 434.....10
Equitable Life Assur. v. Brown,
213 U.S. 25.....11
Fletcher v. Peck, 6 Cranch 87, 136....8
Gibbons v. Ogden, 9 Wheat, 194.....21
Gregory v. Ashcroft, 501 U.S.
452, 459.....21
Hepburn v. Griswold, 8 Wall. 616.
.....12,13,18
Hodges v. U.S., 203 U.S. 1, 17.....18
I.N.S. v. Chadha, 103 S.Ct. 2764.....8
International Long... v. Warehouse.,
69 S.Ct 641.....8
Interstate Land Co. v. Maxwell,
139 U.S. 569.....11
Jones v. Clinton.....23
Julliard v. Greenman, S. Ct.
(110 U.S. 421).....3,8,11
Knox v.Lee, 12 Wall, 457.....11
Legal Tender Cases, 12 Wall. 543.....9
Ling Sue Fan v. United States,
218 U.S. 302.....11
Marbury v. Madison, 1 Cranch, 137.....7
Maryland v. Wortz, 392 U.S. 183.....21
Muculloch v. Maryland, 4 Wheat, 421..10
New York v. United States,
505 U.S. __-__.....21
NLRB v. Jones, 301 U.S. 1.....21
Norman v. Baltimore, 55 S.Ct. 497..3,11
Nortz v. United States, 294 U.S. 325
.....3,9
Porth v. Brodrick, 214 F.2d 925.....18

United States v. Aimes, 99 U.S. 35...11
United States v. Brown,
85 S.Ct. 1712.....8
United States v. Lopez,
514 U.S 549.....3,19,20,23
United States v. Southeastern,
322 U.S. 533.....10
Veazie Bank v. Fenno,
8 Wall 533.....9

STATUTES AND RULES

Article I, Section 2, Clause 2,16,17,21
Article One Section 8.....17,21,22
Article One Section 9, Clause 4.....17
Article One Section 10, Clause 1.....17
12 U.S.C. § 411, as amended.....14
26 U.S.C. § 7433.....1,19,23
28 U.S.C. § 1340.....1
31 U.S.C. § 5101.....15
31 U.S.C. § 5103.....14
10th amendment.....21
13th amendment.....17,18
16th amendment.....20,21,23

OTHER

Coinage Act of April 2, 1792...15,16,17
Fed. Resv. Act 1913... 13,14,16
Emer. Farm Mort. Act of May 12, 1933.11
Legal Tender Act of June 5, 1933..12,13
National Bank Act of 1864.....3

Federal Rules of Civil Procedures
Federal Rules of Appellate Procedures
FRAP Rule 3, 47
8th Circuit Court Local Rule 47(A)(a)
.....2,4,5,6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Petitioners respectfully prays that a Writ of Certiorari issue in review of the judgement below.

OPINIONS BELOW

[x] For case from federal court:

The orders of the United States District Court appear at Appendix A to the petition.

The orders of the United States Court of Appeals for the Eighth Circuit appear at Appendix A to the petition.

JURISDICTION

[x] For cases federal court:

The date on which the United States District Court issued it order; August 15, 1997.

The date on which the United States Court of Appeals for the Eighth Circuit Dismissed Petitioners' Appeal; February 6, 1998.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States of America:
Under Article I;

Section Eight, Clauses One, Two, Three, Four, Five, Six, Eighteen; and

Section Nine, Clauses Three, Four and Seven; and

Section Ten, Clause One;

Statutory Provision:

The Federal Reserve Act of December 23, 1913, and all its amendments including Section 16; codified at 12 U.S.C. § 411;

The Emergency Farm Mortgage Act of May 12, 1933, and all its amendments specifically Section 1(b)(1); codified at 31 U.S.C. § 5103.

The Security Act of May 27, 1933, and all its amendments codified beginning with 15 U.S.C. § 77(a);

The 1st Amendment
The 5th Amendment
The 10th Amendment
The 13th Amendment
The 16th Amendment
12 U.S.C. § 411
26 U.S.C. § 165(g)
26 U.S.C. § 7433
26 U.S.C. § 6673
28 U.S.C. § 1651(a)
28 U.S.C. § 1340
31 U.S.C. § 5103

STATEMENT OF THE CASE

1. Beginning in April of 1996, petitioners' filed Treasury Claims pursuant to 26 CFR 301.7433 in an attempt to exhaust administrative remedies for the imposition and survival of a 26 U.S.C. § 7433 damage action. (26 U.S.C. § 7433(d)(1).

2. On July 5, 1996, during the six months time period, the 8th Circuit Court of Appeals, entered its decision in Joeckel, et al., v. United States, 95-3532, finding the district court's judgement in Nebraska affirmed citing 8th Circuit Rule 47(B) involving 26 U.S.C. § 7433 type action.

3. On July 30, 1996, President Clinton amended Tax Payer Bill of Rights wherein petitioners were not held required to exhaust administrative remedies in order to justify civil damage action against United States pursuant to 26 U.S.C. § 7433, contrary to July 5, 1996, affirmed in 95-3532.

4. On October 29, 1996, after waiting approximately six months as determined in 95-3532, petitioners commenced litigation pursuant to 26 U.S.C. § 7433 and 28 U.S.C. § 1340, evidencing complete exhaustion of administrative remedy, whatsoever, styled Paul W. Graber, et al., v. United States, et al., Case No. 4-96-CV-70785, naming specific Employees of the I.R.S. as defendants individually and officially.

5. On February 6, 1997, respondents filed their collective answer and a counterclaim against petitioners, denying the allegations in petitioners' complaint.

6. On August 15, 1997, the District Court entered its final order dismissing petitioners' complaint and allowing respondent's "Counterclaim" against petitioners.

7. Petitioners' filed a timely Notice of Appeal on October 14, 1997.

8. On December 29, 1997, petitioners' timely filed their Opening Brief in 8th Circuit Court Case No. 97-3866.

9. On February 6, 1998, during the appeal process, the Court Clerk for the 8th Circuit Court of Appeals dismiss 97-3866 upon the Court's own Motion.

10. This Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

11. The One Supreme Court should Grant petitioners' Writ of Certiorari for the reason petitioners were denied any right to any review of the District Court's decision, contrary to the existence of FRAP 3.

12. Petitioners are numerous in number and demand the right to be heard and have their issues addressed, avoiding the catch all phrases "frivolous and without merit" but yet have been refused by the Circuit Court.

13. The U.S. has no **MONEY** as enumerated in the Constitution, Federal Reserve notes are not money in form or substance and thus all power claimed involving taxation is fictitious claim of United States in equity.

14. The United States Court of Appeals for the 8th Circuit has so far departed from the accepted and usual course of judicial proceedings involving appeals, as to call for an exercise of this Court's enumerated power.

15. If U.S. Court of Appeals for the 8th Circuits final decision involving petitioners remains, it would render petitioners' rights where "Congress shall make no law respecting 'the right of the people to petition the Government for a redress of grievance'" fictitious.

16. The issues raised by petitioners in District Court involve need for clarification upon separation of powers between United States and State and between United States and People as provided by 10th amendment.

17. The Supreme Court's decision in the Gold cases of 1934, are in need of review and overturned on grounds Federal Reserve note dollars and Money Dollars are no longer equivalent in trade, leaving each Union State in violation to Article I, § 10, Cl.1. prohibitions in violation to the United States of America's Constitution, causing damage to petitioners' rights to property.

18. The income tax laws produce effect of involuntary servitude, without choice, contrary to 13th amendment prohibitions.

19. The District Court and United States Court of Appeals for the 8th Circuit are applying phrase "among the several States" in opposition to Supreme Court's mandate in U.S. v. Lopez.

20. Since at least 1862, the United States has exercised power to issue notes of credit which were intended to circulate as currency, but in fact, were not money.

21. Since at least 1913, Congress has authorized the issuance of Federal Reserve notes which purported to be redeemable in current monies substance.

22. Since at least 1933, the United States has issued or caused to be issued unredeemable Federal Reserve notes which purport to be Legal Tender when said notes do not conform to Section 16 of the Reserve Act. Said notes are unredeemable, unauthorized and/or unwarranted pursuant to any Power involving the issuance of Securities of the United States.

23. Court Clerks power to summarily affirm District Court final judgement violates separation of powers doctrine and also violations of the first amendment rights of all petitioners.

SUMMARILY AFFIRMANCE ARGUMENT ON 47A(a)

24. Petitioners were refused the right to conclude the briefing schedule by the filing of any reply to appellee's brief. In fact, appellee never filed their brief.

25. On February 6, 1998, the 8th Circuit Court of Appeals issued a "Judgement" wherein it referred to the "Appeal from the United States District Court for the Southern District of Iowa" and where the Court "summarily affirmed" the court's judgement "on its own Motion. In the Court's February 6, 1998, order, the Court ordered in accordance with "Eighth Circuit Rule 47A(a).

26. Local Rule 47A(a) states:

"(a) **On Motion of Court.**

> The Court on its own motion may summarily dispose of any appeal without notice...The Court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the questions presented do not require further consideration."

27. The petitioners' applied "..." within the courts rule where reference is made to "in forma pauperis" on grounds such language of the rule is not applicable to the petitioners herein.

28. The petitioners' received unfair treatment by the Eighth Circuit Court of Appeals whereby the Court exercised it's discretionary functions applicable with issues contained in "promulgated" Local Rule 47A(a). Local Rule 47A(a) applies to the disposition of any appeal without notice. A fair construction involving the spirit of Local Rule 47A(a) is that:

a. the Court may "dismiss" the appeal if the appeal is not within the court's jurisdiction;
b. the Court may dismiss the appeal i f the appeal is determined by the Court to be frivolous;
c. the Court may dismiss the appeal i f the appeal is without merit;
d. the Court may **affirm** or **reverse** when the questions presented do not require further consideration.

29. With regard to whether the Appellate Court has jurisdiction (number 1 above) to determine the merits of petitioners' request (right under Rule 3) for review of the District Court's Order, the Appellate Court obviously has jurisdiction based upon the **prima facie, preponderance and beyond a reasonable doubt** "evidence" of its Judgement entered February 6, 1998. If the Appellate Court decided it did not have Jurisdiction over the Appeal, then the Appellate Court would dismiss "for want of Jurisdiction." No Judgement upon the merits could be invoked.

30. With regard to whether the Court determined petitioners' Notice of Appeal was "frivolous" its appears the 8th Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Opening Brief in an Appeal, was determined "frivolous," petitioners' request the One Supreme Court consider grounds the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "frivolousness." A appeal, if determined to be frivolous, violates petitioners' rights to take an appeal.

31. With regard to whether the Court determined that petitioners' Appeal is "without merit" (number 3 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Appeal, was determined "without merit," petitioners' request the One Supreme Court consider grounds the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "without merit."

32. FRAP Rule 3 allows for the petitioners to take the appeal as of right. The actions of the Appellate Court appear to be an attempt to prevent petitioners' opening brief from being addressed on the merits by the appellee and the Court. The Appellate Court could not have determined that issues raised or questions presented were without merit since no such issues or questions were addressed by the Court. The 8th Circuit Court of Appeals is developing a pattern of abuse with regard to "appeal as of right."

33. With regard to the Court affirming or reversing (number 4 above) when the questions presented do not require further consideration, the petitioners undeniably argue the Appellate Court did "summarily affirm" the District Court's Order but upon what grounds was their "Motion" under Rule 47. Petitioners were not served with the Court's own Motion. What motion?

34. The Circuit Court has formally denied petitioners' right to present any issues or questions for review and thus the Judgement of summarily affirmed should be "REVERSED".

RULE 47A(a) IS VIOLATIVE OF 1ST AMENDMENT

35. The Judicial power has no authority at the District Court to act as rule maker with regard to specific statute. The 8th Circuit Court of Appeals lacks authority to prevent petitioners from exercising their inherent rights to receive an opinion on the issues presented in their opening brief. In 1965, the Supreme Court said that:

> "The Constitution divides the National Government into three branches-Legislative, Executive and Judicial. This separation of powers' was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny. For if governmental power is fractionalized, if a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will."

James Madison wrote:

> 'The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.'
>
> The doctrine of separated powers is implemented by a number of constitutional provisions, some of which entrust certain jobs exclusively to certain branches, while others say that a given task is not to be performed by a given branch... Marbury v. Madison, 1 Cranch, 137.

Alexander Hamilton wrote:

'Nothing is more common than for a free people, in time of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves.

The name of liberty applied to such government, would be a mockery of common sense." United States v. Brown, 85 S.Ct. 1712-1713.

By banning bills of attainder, the Framers of the Constitution sought to guard against such dangers by limiting legislatures to the task of rule-making. Fletcher v. Peck, 6 Cranch 87, 136. Brown at 1713.

36. "The violation of the doctrine of separation of powers occurs when there is an assumption by one branch of powers that are central or essential to the operation of a coordinate branch, provided that the assumption disrupts the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the government." I.N.S. v. Chadha 103 S.Ct. 2764.

37. The phrase "court of the United States" without more, means solely courts created by Congress under this article and not territorial courts. International Longshoremen's v. Warehousemen's Union, CIO, 1948, 170 F.2d 183, Cert denied at 69 S.Ct. 641, 936 and 1155. "But at most these other avenues of relief are speculative." I.N.S at 2777.

MONEY ARGUMENT

38. Since Julliard v. Greenman, S.Ct (110 U.S. 421), the Judicial Power involving Legal Tender placed Congressional Power under Article I, Section Eight, Clause Two, wherein this Court said:

"The power to borrow money on the credit of the United States is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the **obligations of the United States** in any appropriate form, of stock, bonds, bills, or **NOTES**; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government.

So much is settled beyond doubt, ...and was admitted by the judges who dissented from the decision in the Legal Tender Cases, as well as by those who concurred in that decision. Veazie Bank v. Fenno, 8 Wall. 533, 548;Hepburn v. Griswold, 8 Wall.616, 636; Legal Tender Cases, 12 Wall. 543, 544, 560, 582, 610, 613, 637. It is equally well settled that Congress has the power ..

..of issuing bills which, under ordinary circumstances, pass from hand to hand as money at their nominal value, and which, when so current, the law has always recognized as a good tender in payment of money debts, unless specifically objected to at the time of the tender."

39. In Chief Justice Marshall's words involving acts of Congress:

"Let the end be legitimate, let it be within the scope of the constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." McCulloch v. Maryland, 4 Wheat, 421.

"Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resides in the states." Craig v. Missouri, 4 Pet. 410, 435

"If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary to say, will be involved in that of borrowing." 5 Elliot, Deb. 434, 435, and note.

40. In United States v. South-Eastern Underwriters, 322 U.S. 533, the One Supreme Court said:

"Courts do not ordinarily give words used in the Constitution narrower meanings than they had in common parlance when the Constitution was written."

41. Although it seems on the surface that the issues herein raised appear to have been well adjudicated upon the merits, the petitioner points out that quite the opposite applies;

> "Defendant's demurrer, which admitted the facts well pleaded in the petition, did not admit allegations which amounted to conclusions of law in relation to the nature of the gold certificates or the legal effect of the legislation under which they were issued, held, or to be redeemed. Dillon v. Barnard, 21 Wall. 430, 437; United States v.Ames, S.Ct (99 U.S. 35), 45; Int.Land Co. V. Maxwell Land Co., S.Ct (139 U.S. 569, 577, 578); Eq. Life Ass. Society V. Brown, S.Ct (213 U.S. 25, 43)." Nortz v. United States, S.Ct.(294 U.S. 325).
>
> "Plaintiff explicitly states his concurrence in the Government's contention that the Congress has complete authority to regulate the currency system of the country, He does not deny that, in exercising that authority, the Congress had power 'to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates.'
>
> Nor does he deny that the Congress had authority to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession.'" Knox v. Lee, 12 Wall. 457; Julliard v. Greenman, S.Ct (110 U.S. 421); Ling Su Fan v. U.S., S.Ct (218 U.S.302); Norman v. Balt. & Ohio R. Co., 55 S.Ct. 497.

42. On June 5th, 1933, Congress passed a Joint Resolution 48 Stat. 112, amending the Emergency Farm Mortgage Act of May 12, 1933, wherein it defined at section (b) that the term obligation means an obligation payable in money of the United States; and the term coin and currency means coin or currency of the U.S. including Federal Reserve notes. This resolution provided also that "every obligation, heretofore, or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

43. The Supreme Court also stated that:

> "There is a well-known law of currency, that **notes or promises to pay**, unless made conveniently and promptly convertible into coin at the will of the holder, can never, except under unusual and abnormal conditions, be at par in circulation with coin. It is an equally well-known law, that depreciation of notes must increase with the increase of the quantity put in circulation and the diminution of confidence in the ability or disposition to **redeem**.
>
> Admitted then...assuming that the act is warranted by the Constitution, when depreciation reached its lowest point,to accept in payment a thousand **NOTE** dollars, although with the thousand coin dollars, due under the contract, he could have purchased on that day two thousand eight hundred and fifty such [note] dollars."

44. Due to the fact the United States argues that all powers conferred to it are powers which involve money, and that issuing bills of credit are an exercise of [any] all powers, the Hepburn Court raised the question "Can this proposition be maintained[?]." The Court answered the question in the negative that:

> "the admission of a legislative power to determine finally what powers have the described relation as means to the execution absolutely and without liability to question, in cases involving private rights, the powers thus determined to have the relation, would completely change the nature of American government. It would covert the government, which the people ordained as a government of limited powers, into a government of unlimited powers. It would confuse the boundaries which separate the executive and judicial from the legislative authority. It would obliterate every criterion which this court, speaking through the venerated Chief Justice in the case already cited, establish for the determination of the question whether legislative acts are constitutional or unconstitutional.
>
> Now, then, let it be considered what has actually been done in the provisions of a National Currency."

Hepburn v.Griswold 8 Wall at 618.

45. The question thus arises "what is lawful money of account of the United States and what is the dollar quantity thereof[?]." First, all Federal Reserve notes are issued pursuant to the Sixty-Third Congress. Sess.

II Ch. 6, where by Congress, allegedly among means appropriate, plainly adapted, really calculated, as the legislature exercising an unrestricted choice (quoting Hepburn). Included within its choice, Section 16 of the act of December 23, 1913, H.R. 7837, Public Number 43.

46. This Section purported that "Federal Reserve notes... issued...for purpose of making advances...and for no other purpose are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank."

47. Section 16 was later amended by the Seventy-Third Congress. Sess. II. Ch. 6, H.R. 6976, Public Number 87, whereby the third sentence of the original first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. This section remains unamended and in full force.

48. The question thus arises "are all Federal Reserve notes in circulation issues which conform upon their face to Section 16 of the act of December 23, 1913 as amended[?]." This question requires another question to be addressed first. "Are all Federal Reserve notes, issued pursuant to Section 16 of the act of December 23, 1913, as amended, redeemable in lawful money at any Federal Reserve bank or at the Treasury Department.

49. This question requires yet the answer to another question which is what is "lawful money of the United States as defined and intended by the spirit of the Constitution[?]." This question demands yet a final answer to a question "what is money enumerated in the Constitution."

50. This Court answered the question of what is Money by saying:

> "There is nothing in the terms of the act which looks to any difference in its operation on different descriptions of debts payable generally in money-that is to say in dollars and parts of dollars. Hepburn, at 609

51. The Act of April 2, 1792, Second-Congress, Sess. I, Ch. 16, Section 9 provides the answer to the question of defining the substance of a "dollar."

> "Dollar or Units-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and ten sixteenth parts of grain of pure, or four hundred and eighty-five grains of standard silver.

52. In 31 U.S.C. § 5101, pursuant to Public Law 97-258, Congress found that "United States Money is expressed in dollars, dimes or tenths, cents or hundredths, and mills of thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."

53. United States Money is then a mill of a dollar. A mill is then one-tenth of a cent. Conclusively, United States Money is today measured in mills of cents. At no time did Congress express that United States Money is expressed in Federal Reserve notes.

54. The answer to the question "What is Money as defined by the spirit of the Constitution" is <u>coin</u> as struck in fractions of dollars measured by cents as defined by the current Coinage Act of April 2, 1792. In section 9, where it states that "Cents- each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper," and is devisable in fractions of a dollar or in 1-cent, 5-cents, 10-cents, 25 cents, 50 cents, 100 cents equals one dollar.

55. The answer to the question "what is lawful Money of the United States" or in other word what is legally warranted by the Constitutions enumeration to be Money and the answer is Coin measured by certain parity which equals fineness and weight.

56. The answer to the question do all Federal Reserve notes issued pursuant to section 16 of the Federal Reserve Act of 1913, as amended, require redemption in lawful money at any Federal Reserve Bank. The answer Yes. Each note being redeemable dollar for note would mean that in order for each Federal Reserve note to be "Legal Tender" all Federal Reserve notes must be secured by dollars, claimable on demand and as defined in the Coinage Act of April 2, 1792, as amended.

57. Congress was expressly enumerated with the power to punish any person[s] who "issues counterfeit securities or current coin of the United States," at Article I, Section 8, Clause 6. This shows the intent that are founding fathers never intended for any Thing but Dollars representing a parity of Gold or Silver content, or at the very least some metal coin of distinguishable character, fineness and weight, as defined above, to be circulating as securities or currency allegedly redeemable in lawful money when no such security exist by, of or in U.S.

58. Demanding petitioners' labor exchanging for unredeemable Federal Reserve notes is in violation to petitioner's right to due process.

59. The evidence of the money borrowed is the note or security issued and thus the note or security could never become that which it purports to secure or borrow. 12 U.S.C. § 411, as amended, provides that the substance of a Federal Reserve note is required to be "lawful money." A defining character of said note is its to be redeemed on demand in lawful money at any Federal Reserve bank or the Department of Treasury.

60. Each State in the Union is prohibited from tendering any Thing but Gold and Silver coin as a legal tender in payment of debt. Article I, Section 10, Clause 1. Since Federal Reserve notes are unredeemable, and that said Union States rely upon collection of said notes to pay their debts, the Supreme Court's decisions in the Gold cases attempts to nullify the prohibitions against Union States in violation to any power conferred to the United States, whatsoever, mandating violations of the specific prohibitions involving that of money, namely, Article I, § 8, Clause, 1,2,3,4,5,6,18, and in § 9, Clause 3,7, and in § 10, Clauses 1.

61. When the District and Appellate Courts refuse to consider certain clear intent of the Federal Reserve note issuing statute, namely that which requires the note to be redeemed in lawful money, what adequate means to attain relief is available to petitioners.

INVOLUNTARY SERVITUDE

62. Petitioners are being held against their will to enforced compulsory service to the United States by way of the Internal Revenue Service employees reckless and intentional disregard in application of the Internal Revenue Laws. Petitioners have well documented their intent and the terms of their involvement in the 10th amendment. As the 10th Circuit Court stated in Porth v. Brodrick, 214 F.2d 825, "if the tax laws were classified as a kind of servitude, they would not be the same kind of involuntary servitude as contemplated within the 13th amendment." Since the tax laws would not be the same kind of involuntary servitude as contemplated in the 13th amendment, the tax laws must be of a voluntary servitude in their nature. 70. In Hodges v. United States, 203 U.S. 1, 17, the One Supreme Court stated that "servitude is by the same authority declared to be 'the state of voluntary or compulsory subjection to a master.'"

63. The United State has developed an elaborate scheme whereby pursuant to the Power to Borrow Money on the Credit of the United States, it has, in furtherance of aid to its Power to Coin Money, regulate the value thereof and fixing the standard of weights and measures under the necessary and proper rule of Article One, Section Eight, Clause Eighteen of the Constitution, results of which produced the appearance that Federal Reserve notes, which printed upon those instruments is the word "Dollar", are somehow U.S. Dollars, thus considered Money as defined throughout the spirit and intent of those limited enumerated powers of Section Eight of the First Article and all other usages of the term "Money" therein and are incorrectly imposed equity claims of tax upon petitioners' rights to exist for no legitimate exercise of any powers enumerated.

64. Petitioners alleged defendants individually named in their 26 U.S.C. § 7433 damage action were agents of a foreign principal and not agents of the United States Government.

65. Petitioners have right to be heard in order to prepare a record on appeal which could shape the issues herein presented, allowing a 30 page Writ of Certiorari to accomplish what petitioners deem need to redress.

10th AMENDMENT ARGUMENT AMONG THE SEVERAL STATES

66. The phrase "among the several States" included in the direct language of the 16th amendment means interstate as it has always been defined prior to and ever since same.

67. In United States v. Lopez, 115 S.Ct 1624 (1995) the Supreme Court struck down and invalidated the Gun Free School Zones Act, 18 U.S.C. § 922(q).

68. The Supreme Court, in an opinion by Chief Justice Renquist, held that the Gun Free School Zone Act, making it a federal offence for any individual to knowingly possess firearms at a place that the individual knows or has reasonable cause to believe is a school zone, exceeded Congress' Commerce Clause authority since possession of a gun in a local school zone was not an economic activity that substantially affected interstate commerce.

69. In its opinion, the Supreme Court divided permissible Commerce Clause regulation into three categories:

1. "the use of the channels of interstate commerce;"

2. "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activity"

3. "those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."

70. The Court concluded that section 922 (q), classified in the third category, failed to substantially affect interstate commerce. Lopez, @ 1629-1630.

71. As the 16th amendment contain no jurisdictional nexus element which would ensure through case-by-case inquiry that the action in question affects interstate commerce, then the Court must ask whether the amendments constitutionality, of the constitutionality of its application in a particular case, is supported by the findings in the legislative history of the amendment, the litigants' proffered challenge to the constitutionality of the amendment, or by the Court's own attribution of congressional purpose to the amendment.

72. The 16th amendment congressional findings contain no logical stopping point that could serve as a surrogate for the missing jurisdictional nexus requirement. Regulating activity of petitioners is in no sense necessary to regulate the Internal Revenue Laws. The 16th amendment through the Commerce Clause would thus be converted into a general police power.

73. The District Court incorrectly decided facts relating to Congressional authority involving income tax derived from sources "among the several States.

The phrase "among the several States" adopted in the language of the 16th amendment as taken either from Article I, § 2, Cl. 3 or Article I, § 8 has unanimously been determined to mean "interstate" by the One Supreme Court and which statistically, has no effect upon other Union States wholly intrastate, directly or indirectly.

74. The Xth Amendment of the Constitution created by the States of the Union limits the power of the United States to it specific designations. See New York v. United States, 505, __ __ (1992) (slip at 7) "No one disputes the proposition that the Constitution created a Federal Government of limited powers." (Gregory v. Ashcroft, 501 U.S. 452, 457 (1991); Maryland v. Wirtz, 392 U.S. 183, 196(1968); NLRB v. Jones, 301 U.S. 1, 37 (1937); Cf. Chisolm v. Georgia, 2 Dall, 419, 435 (1793) (Iredell, J.) "Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them." The powers accorded Congress are enumerated specifically at Article I, Section 8, 1-18 and 1, Section 9.

75. The Court took great pains to make clear that Congress could not regulate commerce "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States." Gibbons v. Ogden, 9 wheat 1, at 194-196. But even if one were to adopt the reading that the "affects" language, at most, permits Congress to regulate only intrastate commerce that substantially affects interstate and foreign Commerce the limitation is self evident. This determination arrived due to the direct language of Article I, § 8, Cl. 3.

It is the limitation phrase "among the several States."

> "Congress shall have the power to lay and collect taxes...(lden. 3) to regulate Commerce with foreign nations, among the several States, and with the Indian Tribes."(Art. 1, § 8, Cl. 3).

76. Although the distinction between what is commerce among the several States and what is income derived from sources among the several States appears to be different in subject matter, "Comprehensive as the word 'among' is it may very properly be restricted to that commerce which concerns more State than one...The enumeration presupposes something not enumerated and that something, if we regard the language or the subject of the sentence must be the exclusive commerce of a State." (Gibbons Court, Id. 194-196). As in the instant case the issue is whether or not Congress enacted statutes which compel the filing of a 1040 U.S. Interstate Individual Income Tax Return absent records relating to such when no evidence indicates any notes received among the several States. In this sense, if we regard the language or the subject of the sentence, involving the 16th amendment, the 16th involves the exclusive receipt of money concerning more States than one.

77. The phrase "among the several States" as appearing in the Constitution enumerated by the State of the Union means "interstate". Seemingly, no judicial determination is available on this issue beyond the Lopez analysis.

78. The phrase "among the several States" specifically limits the Jurisdiction for the 16th Amendment.

79. The "16th amendment declares that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. It was not the purpose or effect of the Amendment to bring any new subjects within the taxing power. In determining what constitutes income substance rather than form is to be given controlling weight. Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926).

80. The " 16th amendment added no new taxing power to Congress." Brushaber.

81. Court of Appeals had no justifiable reason as to why petitioners' rights to appeal the decision of the District Court was abridged arbitrarily without explanation, and without the 8th Circuit Court reviewing the questions presented involving the 16th amendment.

7433 DAMAGE CLAIMS

82. Petitioners' maintenance of damage claims pursuant to 26 U.S.C. § 7433 can be maintained against individual agents of the Internal Revenue Service for their reckless and intentional disregard for the internal revenue laws. The United States argues that Bivens claims against these defendants is not appropriate because Congress has enacted a remedial mechanism which allows petitioners to redress against the United States for their employees conduct.

83. Allowing the District Court's judgement to stand has the absurd affect that all Internal Revenue Service employees whom act reckless and intentional disregard for the law are somehow elevated above the law. If the President is not above the Law, see Jones v. Clinton, then neither are these individually named defendants.

84. Petitioners' believe that Internal Revenue Service employees are not entitled to qualified immunity as "agents" of the United States Government are concerned. Petitioners' believe the term agent, as other terms are abused, is being stretched beyond presupposition.

TAXING WITHOUT APPORTIONMENT

85. The District Court determined that Congress may impose its taxing will upon people of each Union State directly, and without regard to anything, whatsoever. Petitioners can not subscribe to the District Court's determinations. When the 16th amendment removed the rule of apportionment, it did not remove the 10th amendment. Congress has no power enumerated to impose a liability upon Union State Citizens for the mere right of existence. Taxing among the several States and taxing among the several people are two different directives. One being endorsed by the Constitution and the other strictly forbidden.

86. The Internal Revenue Laws, if found by the One Supreme Court to endorse legislation affecting Union State Citizens, is undeniably unconstitutional.

CONCLUSION

The petitioners' request One Supreme Court hear oral argument on this an other like cases involving right to be heard involving questions presented herein.

Therefore, the petition for Writ of Certiorari should issue.

Respectfully Submitted

Date: May 6, 1998